



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 20, 1995

Ms. Kay Ellen Pollack  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR95-1549

Dear Ms. Pollack:

You ask whether certain information is subject to required public disclosure pursuant to chapter 552 of the Government Code. Your request was assigned ID# 36686.

The Dallas Police Department (the "department") received a request for documents related to (1) the department's use of force continuum, (2) all materials concerning the training and use of batons or other impact type weapons, mace or any other form of irritants, and handcuffs used during an arrest, and (3) a copy of an inter-office memorandum from 1993 concerning the use of pepper spray. You state that you have released some of the requested information. You have submitted for our review responsive information that you contend is excepted from required public disclosure pursuant to sections 552.108 and 552.111 of the Government Code.<sup>1</sup>

You contend that section 552.108 excepts from required disclosure various portions of the department's officer training materials submitted for our review. You argue that the release of the information would unduly interfere with crime enforcement, prevention, and detection. Additionally, you argue that release of the information could endanger the lives of officers who rely on the secrecy of their tactics and techniques when apprehending suspects. You contend that if a suspect were to have access to the information at issue, which is from internal documents used to provide technical assistance to department officers, it would assist the suspect in evading arrest or injuring the officers.

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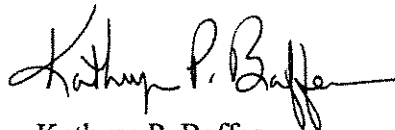
<sup>1</sup>Though you cite section 552.112, based upon your argument, we assume that you meant to assert section 552.111 as authority for withholding the memorandum requested from required public disclosure.

A law enforcement agency may withhold specific guidelines on use of force because release of the information could impair an officer's ability to arrest a suspect or protect the public peace. Open Records Decision No. 531 (1989). We have examined the information that you seek to withhold pursuant to section 552.108. In reviewing the documents submitted for our review, portions of these documents detail the components and procedures for the use of various weapons and restraints available for use by department officers. This office concluded, in Open Records Letter No. 93-649 (1993), that the release of the department's handcuffing procedure would unduly interfere with law enforcement. We agree that releasing some portions of the procedures for using and applying various weapons and restraints would unduly interfere with law enforcement. We have marked the information that the department may withhold from required public disclosure pursuant to section 552.108 of the Government Code. You must, however, release the remainder of the requested training materials.

You contend that section 552.111, commonly referred to as the agency memorandum exception, excepts the memorandum at issue from required public disclosure. Section 552.111 provides that an intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency is excepted from disclosure. The purpose of this section is to protect from public disclosure advice and opinions on policy matters and to encourage frank and open discussion within the agency in connection with its decision-making processes. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.). The scope of this exception applies only to internal communications consisting of advice, recommendations, or opinions reflecting the policymaking processes of the governmental body at issue. Open Records Decision No. 615 (1993) at 5. Section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of an internal communication. *Id.* We conclude that the memorandum at issue contains some factual information that is not excepted by section 552.111 and must be released to the requestor. The memorandum also contains some advice, recommendation, or opinion regarding the policymaking issue of the use of pepper mace by the department that may be withheld pursuant to section 552.111. We have marked the document to reflect the portions that you must release to the requestor and the portions that you may withhold pursuant to section 552.111.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kathryn P. Baffes", with a long horizontal flourish extending to the right.

Kathryn P. Baffes  
Assistant Attorney General  
Open Records Division

KPB/rho

Ref: ID# 36686

Enclosures: Marked documents

cc: Mr. Michael L. Cronig  
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(w/o enclosures)